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CRIMINAL PROCEDURE CODE AMENDMENT BILL.

When examining the bill as it originally stood, we pointed out the directions in which the bill required alteration. We are glad to note that in many of those points, the Select Committee has taken a similar view. The Select Committee has rejected the proposal to add cheating and offences relating to stamps to the list of offences of which private persons are bound to give information under S. 44. They have added only offences relating to coins and currency notes. They have not accepted the proposal to give power to private persons right to arrest on suspicion. They are for giving that power only to village officers. It may be suggested that having regard to the factious spirit that prevails in villages in certain parts of the country even this extension is not desirable but the Local Government, we think, may be trusted to sufficiently bear that fact in mind when extending the power to village officers in such areas. Unreasonable disobedience of an order to attend search has been made an offence but an order in writing is made a condition precedent thereto and it is also suggested that executive instructions should be issued that only persons in the immediate vicinity should be asked to attend. The suggestion illustrates the possibility of abuse the section may be capable of and it is a matter for consideration if some more precautions are not necessary. The provision in S. 88 for investigation of claims on the lines of the Civil Procedure is unexceptionable but it is desirable to state against whom the suit is to be. The proposal of the Select Committee to expressly say that the appellate court has the power to order security under S. 106 though the first court may not have had the power is in accordance with the trend of decisions but it is not, as pointed out in one of the decisions the other way, in accordance with the true theory of appeals. It is unnecessary to give the appellate Court this power of practically enhancing the sentence. Nor do we think that the Magistrate should have the power to order security in the case of all offences coming within Chapter VIII of the

Penal Code. Offences under Ss. 154 to 156 certainly cannot require such treatment. Nor do all cases of S. 153-A or even of unlawful assembly. The addition of the words "or in any other manner" in S. 108 may look quite innocuous and is in harmony with the progress of legislation in this country and though it cannot be denied that on occasions signs or exhibitions might be quite as efficacious instruments of sedition as writing or speech, nevertheless it is a matter for deep consideration if this extension is really needed and if possibilities of misuse do not countervail the possible advantages. The right of appeal sought to be conferred in the case of rejection of sureties under S. 122 is distinctly an improvement as experience shows the power is capable of being abused. Provision that the unfitness of the surety is to have reference to the purposes of the bond is also a step in the right direction but is not, we are afraid, adequate as there could not have been any serious doubt at any time that it could have reference to anything else. We realise, however, the difficulties in the way of making an exhaustive enumeration of the objections and the right of appeal conferred may in a large measure, meet the requirements. Finality proposed to be given in S. 135 to the order even in respect to the character of the way may look hard but is only for the purposes of the section and even as it is, the private party could not get compensation if the way turned out to be not public on examination in Civil Court. The alteration in the law, therefore, cannot be said to materially prejudice any party.

Under S. 145 as it stands, the Magistrate though he might treat a person forcibly evicted within 2 months of the order as a person in possession, has no power to restore possession to him. It is only right that such a power should be conferred on the Magistrates and it is curious that the omission should have so long escaped notice. It may show the little need that ordinarily exists for this chapter. The others changes suggested are also desirable. It is to be regretted that the Committee did not see its way to recommend the omission of the whole chapter. Ordinarily these proceedings only mark the first step in the game of litigation and are not seriously regarded as anything else. Danger to public safety is mostly simulated and can always be adequately protected by recourse to the powers under S. 107. A source of wasteful and needless litigation, it is time to stop the farce, if need be, by establishing more civil courts. Larger powers of search &c., are intended to be given to the investigating officers

but precaution is taken that the investigating officers should not be below the rank of Sub-Inspectors. We think that the committee did quite right in recommending that statements made to police officers (not merely the records of such statements) ought under no circumstances to be used against the accused. Their corroborative value is as pointed out by the Committee, very small.

As regards S. 195, the Committee propose a radical change. The following are the changes :

i. They remove the institution of proceedings entirely from the hands of private parties and commit it to the court or to some officer appointed by the Local Government.

ii. They restrict the right of appeal.

iii. They give discretion to the Magistrate to postpone trial pending appeal.

iv. They exclude the proceedings from revisional jurisdiction.

We agree with the Committee in thinking that taking the institution of proceedings out of the hands of private parties would supply an effective check to vexatious applications for sanction. As it is, the institution of sanction proceedings hardly ever proceeds from a single or even partial desire to vindicate justice. We think the alteration suggested is likely to exert a wholesome influence though we do not believe it is necessary to take away the revisional jurisdiction of the High Court for that purpose. Further, there are some points in connection with it which having regard to the course of decisions require clearing up. Both the High Courts of Calcuttā and Madras in Full Bench have decided that the determination to start proceedings under Sec. 476 should be made at or immediately after the termination of the proceedings in the course of which the matter arises. It is not clear if it is intended to perpetuate this view. The Local Government could not at any rate make up its mind without looking into the judgment. It is also to be noted that restriction on appeals could be got round by making an independent application to the appellate court. Power should also be expressly conferred, we think, on the Magistrate to discharge the accused in accordance with the judgment of the appellate court. The judgment of the appellate court would not be evidence and as such could not be acted on by the Magistrate unless power under S. 203 is *mutatis mutandis* extended to proceedings instituted under S. 476.

The new section as to joinder of charges does require further consideration. It may lead in the working of it to considerable amount of confusion. What is to happen, if for instance where three persons are charged with jointly committing three offences of the same nature, all the three are found to have joined in one, two only in the second, one only in the third. Can they all be convicted or should a fresh trial be gone through? If the facts alleged are the same as the facts found, under the section as it stands, they could not have been jointly charged. Some provision ought to be made for such contingencies. As regards the summoning of witnesses in summons cases, we must reiterate what we said previously on that matter. We cannot understand why the procedure should not be assimilated to that in civil cases. The circumstance that commissions cannot be issued for examination of witnesses in criminal cases to the same extent as in civil, will be even then a matter which the Court can legitimately take into account before issuing the process. Communication of the result of investigation to the informant is a desirable addition. So also the provision that to entitle the accused to compensation the complaint should not only be frivolous or vexatious but also false. A true complaint can be frivolous or on occasions may even be vexatious but it is absurd that the accused in such a case should get compensation. The raising of compensation from 50 to 100 we do not think is called for. Instead of becoming a check on frivolous accusations, there is the danger of the section acting as a check on true and honest accusations, specially by the poorer sort of people. In all cases where substantial damages should be recovered, the aggrieved party can resort to the Civil Court. We think also that it should be made clear that compensation should be payable only to the persons against whom accusation is made by the complainant or informant and not also to those whom the police in the course of their investigation charge as being involved in the offence. The Select Committee refuse to add cheating to the list of compoundable offences, perhaps rightly but the list may with advantage we think, be extended in other directions. The provisions permitting a party to be examined as a witness in proceedings under Chapters X to XII & XXXVI or under S. 552 is right. Those proceedings are *quasi civil* in their nature and there is no reason why in those proceedings a party should not examine himself when especially the tendency in other countries is to allow

the accused to examine himself on oath. But in this connection we must note, a remark that applies equally to affidavits under S. 539-A, without amending the section of the Oaths Act, oaths cannot be administered to accused persons and the extension would to a considerable extent remain a dead-letter. As regards the powers of Presidency Magistrates, we fully endorse the opinion of the Select Committee that there is no special reason why they should be entrusted with wider powers than those of ordinary first-class Magistrates. Their powers of summary trial must be reconsidered and may, we think, be curtailed without detriment to public interest. It is doubtful if any extension of the use of pardon is called for having regard to the very unsatisfactory nature of the evidence procured under those conditions and the danger that lies in its abuse though no doubt precaution has been taken to prevent such abuse by requiring committal to the Sessions Court in all such cases. The Select Committee propose an alteration in S. 429 by which on a difference of opinion a criminal appeal may be heard by a Bench of three Judges at the choice of either or both the Judges composing the Bench. We would suggest instead a rehearing in all cases before 3 Judges. Under the law as it stands at present, the strange result follows at times that though the judges differing are for a reduction or variation of sentence, the third Judge may confirm the sentence. By the new S. 415-A, a right of appeal is conferred on all persons convicted at a trial in which one of the persons has been given an appealable sentence. The view of the Allahabad High Court is that that is the law even under the Code as it stands at present while the Madras High Court takes a different view. It seems to be only right that the benefit of the opinion of the Appellate Court should enure equally in favour of all the accused though no doubt there may be some cases in which the conclusion as regards one accused may not have any bearing on the other or the others. But that is not the usual case. The amendment to S. 418 proceeds on the same principle.

The Committee decline to propose enhancement of the rate of maintenance awardable under S. 488 and as we said before, rightly. In the conditions of this country, an allowance of Rs. 50 is quite adequate and if a person is entitled to a larger award under the law, the Civil Courts should be resorted to. It is not advisable to transfer the function of the Civil Courts to the Criminal. We must confess though against our first inclination

that there is much to be said in favour of the conclusion of the Committee retaining the words "living in adultery." The recommended addition to S. 497 giving the Court power to release on bail apart from the merits of the case, to persons under the age of 16, sick persons and women, is a desirable amendment. The power of confiscation conferred by S. 517 is a dangerous power and we think should be carefully defined. It should, we think, be confined in cases other than those expressly provided for to property used in the commission of offences. We do not believe that any extension of powers under S. 522 is called for. Any power given to the Criminal Court to determine civil rights is to be scrutinised with care the more so as in this case, the question of dispossession may not even directly arise.

The proposed S. 561-A recognises inherent powers in the High Court, but no such inherent power in the Subordinate Courts is recognised. Recognition of such an indefinite power in the illtrained Subordinate Magistracy is too full of dangerous possibilities to be seriously contemplated, though all Courts must have some inherent powers.

BOOK REVIEWS.

THE MADRAS ESTATES LAND ACT, *by M. Krishnamachariar, M. A., M. L., Ph. D., (of the Madras Provincial Judicial Service) Published by P. R. Ramaiyar & Co., Madras, 1917.*

This is an addition, by no means unwelcome, to the literature connected with the Madras Estates Land Act. The special feature of the book is a clear, analytical treatment of the subject. In an interesting introductory note, the author first deals with the historical aspect of the law in India, and, in the latter half, gives a full synopsis of the Act, winding up with certain suggestions for the amendment of the Act. The notes to the various sections are conveniently brief though full and clear, and the case-law has been adequately noticed. The references to the similar provisions of the Bengal Tenancy Act and the former Rent Recovery Act, have throughout been given and the reprint of these Enactments and of a number of other connected Acts and Regulations as appendices, greatly adds to the utility of the

book. The notifications of the Local Government under the Estates Land Act and some of the papers connected with the Original Bill, such as, the statements of objects and reasons and the Select Committee's report are also found in the Appendix. We can confidently recommend the book to all persons interested in this difficult but important branch of the law as a convenient hand-book on the subject. The get-up of the volume leaves little to be desired.

GHOSH'S LAWYER'S DIARY, 1918.

We are in receipt of this Diary for the year 1918, and it is with much pleasure that we bring to the notice of the public its usefulness which consists in giving varied information ready at hand. For instance, the calculation of interest at various rates, the income tax rules, the Court fees rules, Process fees, Stamp duties, etc.

STUDY ANALYSIS OF THE INDIAN PENAL CODE *by Mr. M. K. Venkatesam, M. A., L. T. By Srinivasa Varadachari & Co.*

We have great pleasure in announcing the publication of the Study Analysis of the Indian Penal Code which gives a short skeleton of the provisions of the Code which may be useful for students in revising the subject after studying the well-known treatises on the enactment.

[*End of Vol. XXXIII.*]